

1 IN THE UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF MISSOURI  
3 CENTRAL DIVISION

4 UNITED STATES OF AMERICA, )  
5 )  
6 Plaintiff, ) Case No.  
7 vs. ) 17-CR-04091-SRB  
8 )  
9 BRANDON DAVID CUDDIHE, )  
10 )  
11 Defendant. )  
12 )

13 SENTENCING HEARING  
14 BEFORE THE HONORABLE STEPHEN R. BOUGH  
15 THURSDAY, MAY 9, 2019  
16 JEFFERSON CITY, MISSOURI

17 APPEARANCES

18 For the Plaintiff: MS. ASHLEY S. TURNER  
19 United States Attorney's Office  
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21 Jefferson City, Missouri 65101

22 For the Defendant: MR. BRADY D. WIMER  
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THURSDAY, MAY 9, 2019

THE COURT: We're here on the case of United States of America v. Brandon Cuddihe. Is that how you pronounce that?

THE DEFENDANT: Cuddihe.

THE COURT: Cuddihe. 17-4091. May I have appearances by the parties, please.

MS. TURNER: Ashley Turner for the United States.

THE COURT: Ms. Turner.

MR. WIMER: Brady Wimer for Mr. Cuddihe, Your Honor.

THE COURT: Mr. Wimer.

Ms. Turner, ma'am, have you had an opportunity to review the presentence report and make any objections?

MS. TURNER: I have, and the government has no objections.

THE COURT: And same question for you, Mr. Wimer.

MR. WIMER: We have no objections either, Your Honor.

THE COURT: Very good. Let me ask you some questions, sir.

Sir, have you had an opportunity to review the presentence report?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And have you had an opportunity to discuss the presentence report with your lawyer?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Is there anything in the PSR that you  
3 believe is incorrect or wrong?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Very good. You may be seated. Thank  
6 you.

7 Total offense level is 43, criminal history category  
8 of 1 resulting in a guideline range of 720 months basically  
9 with no less than 15 and no more than 30 on both of the two  
10 counts, Count 1 and Count 2.

11 Does everybody agree that's what we're talking  
12 about?

13 MS. TURNER: Yes, Your Honor.

14 MR. WIMER: Yes, that's accurate.

15 THE COURT: Let me tell you what I've read so that  
16 we know we're all on the same page. I've read the sentencing  
17 memoranda that have been provided by the parties, and I read  
18 the letters that were submitted by the defense, including a  
19 letter -- handwritten letter from the defendant.

20 I understand we're going to have some evidence from  
21 the Facebook post; is that right, Ms. Turner?

22 MS. TURNER: Yes, briefly.

23 THE COURT: Very good. For your evidence and your  
24 recommendation.

25 MS. TURNER: Thank you, Judge.

1           Your Honor, as noted in our sentencing memorandum,  
2 we are recommending a total of 360 months on Count 1 and 2 to  
3 be served concurrently with one another. The reason why we're  
4 asking for such a high sentence is, frankly, the number of  
5 victims that this defendant has victimized is something that  
6 is not what we usually see in these types of cases and not  
7 what we usually see when we're before you dealing with a  
8 production of child pornography case.

9           One thing that the government was particularly  
10 concerned about, and we're not saying that Mr. Cuddihe is not  
11 entitled to his three-level reduction for acceptance of  
12 responsibility because we read the letters. We've read how he  
13 has interacted with his family members and how his fiancée has  
14 remained supportive.

15           However, the government is concerned that  
16 Mr. Cuddihe has not shown that he appreciates the gravity of  
17 what he has done and is not owning up to the reasoning as to  
18 why he committed these offenses. I have read the forensic  
19 psychological evaluation, and one thing that is concerning is  
20 Mr. Cuddihe seems to create an excuse as to why he conducted  
21 his -- why his conduct was the way it was. He reinforced that  
22 excuse when he wrote his letter to this court.

23           There were probably over 2,000 pages of the Hannah  
24 Richards' fake profile that Mr. Cuddihe utilized to victimize  
25 at least a dozen known minor victims, and there were dozens

1 more that we couldn't identify but appeared through the text  
2 messages and through the pictures that were sent to be a minor  
3 or at least representing themselves to be a minor.

4 THE COURT: What was the timeframe of that expanse?

5 MS. TURNER: The timeframe that we're able to see  
6 from the Facebook, the earliest messages were in May, but it  
7 seems that the -- of 2016. But it seems that Mr. Cuddihe  
8 really ramps up, and from July of 2016 until December of 2016  
9 when he was caught by female victim two's mother, that's the  
10 time period that he was communicating specifically to minors  
11 in a sexual manner. And that's where the excerpts come in.

12 There's some communications in July of 2016 with BM,  
13 who was 13 at the time and 14 when she was interviewed by the  
14 FBI in New York. I wanted to show -- this is just one excerpt  
15 of hundreds of pages to show that this was more than what  
16 Mr. Cuddihe represented to the psychologist during the  
17 forensic examination.

18 There's discussion of specifically requesting  
19 photographs that don't have to do with defecation or urination  
20 and also indication that Mr. Cuddihe is masturbating at the  
21 time when he's talking to her. That is Government's Exhibit  
22 2.

23 I also have an excerpt from female victim two's  
24 conversation. I wanted to show the type of grooming process  
25 that the defendant went through in order to gain these

1 children's trust, and I would like to remind the court that  
2 female victim two was ten years old at the time he was talking  
3 to her.

4 He says things like, OMG, I love you and will you be  
5 my girlfriend. A ten-year-old child, first of all, cannot  
6 fully or even scratch the surface of understanding sexuality  
7 in the way that the defendant was using her in order to  
8 satisfy his sexual needs, and, second, to play with these  
9 children's emotions and to get into their heads.

10 One thing I think -- I put this in my sentencing  
11 memorandum is that these children did not know they were  
12 talking to an adult male. They believed they were talking to  
13 a peer. They believed this was someone they could trust.  
14 They had no idea they were being exploited. Once they became  
15 aware of that exploitation, I just can't even imagine what  
16 that would feel like when you think that you're talking to a  
17 trusted friend or another child and then find out that it's  
18 really a grown man satisfying his sexual needs.

19 So I'd like to show the court, if I may approach,  
20 Government's Exhibits 1 and 2, and I have shown them to  
21 counsel.

22 MR. WIMER: No objection.

23 THE COURT: 1 and 2 are admitted.

24 Ms. Turner, what evidence do you have of  
25 distribution?

1 MS. TURNER: Your Honor, specifically -- well, as  
2 with some of the counts that were dismissed, they involve the  
3 distribution of child pornography. Mr. Cuddihe, when acting  
4 as if he were Hannah Richards, portrayed himself as either a  
5 13-year-old, 14-year-old, or 16-year-old depending on the age  
6 of the child that he was exploiting, and he would send images  
7 -- pornographic images that looked like self-produced images  
8 from an age -- that was consistent with the age that he was  
9 portraying himself.

10 So in the situation with FB2, he sent a video of a  
11 young girl defecating to kind of try to encourage female  
12 victim two to produce a video. Female victim two relied on  
13 that and did end up producing a video of her urinating on the  
14 floor in addition to multiple other pictures of her vaginal  
15 area, her breasts. In the excerpt -- I'm not sure if it's in  
16 the excerpt I sent you, but at least with BM, he asked the  
17 child to put her legs over her head and take a picture of her  
18 vagina and her anus.

19 Also one of the victims was K. R., and that was one  
20 of the victims that was not one of the charged victims, but  
21 was a victim that was interviewed by the FBI. Mr. Cuddihe  
22 took her identity. K. R. sent a picture of her breasts and a  
23 picture of her in underwear. While this would not meet the  
24 definition of child pornography, he did assume this child's  
25 identity who, I believe, was 14 at the time. She was a very

1 attractive young woman, and he sent that picture to 17 other  
2 individuals in order to make them feel more comfortable kind  
3 of like I'll show you yours, you show me mine type situation.

4 Otherwise, in Mr. Cuddihe's interview with FBI  
5 agents, he explained that he -- besides the picture of K. R.,  
6 he would kind of go to amateur pornography sites, find  
7 pictures of children that he believed were under age and would  
8 basically hold himself out to be that child. So that was his  
9 MO.

10 He would go on a Facebook -- go on Facebook, try to  
11 friend a bunch of people on a friends list, make it look like  
12 he was friends with a child's friends, and start personal  
13 messaging them and say, Hey, I think you're cute, let's be  
14 lesbians together. And as noted, some of the victims were as  
15 young as ten years old. Or would say I'm bisexual, let's  
16 experiment, and then would assume the identity of a young  
17 female and exchange pictures. So very disturbing behavior and  
18 was very prolific.

19 I did also -- I know that risk -- potential risk and  
20 future risk is something, one of the things that the court  
21 needs to weigh, and I know that the forensic psychological  
22 evaluation talks about Mr. Cuddihe not technically being a  
23 pedophile. The DSM-V basically shows that over a period of at  
24 least six months, recurrent, intent sexually arousing  
25 fantasies, sexual urges, or behaviors involving sexual

1 activity with prepubescent child or children, the person has  
2 acted on these urges or the sexual urges or fantasies cause  
3 marked distress and interpersonal difficulty and the person is  
4 at least 16 years and at least five years older than the child  
5 or children in criterion A. We know for a fact that beginning  
6 in July, he was talking with young children up until December  
7 of 2016. The defendant admits the only reason he stopped  
8 these communications was because he was caught and was afraid  
9 of getting in trouble. We have no way of knowing whether he  
10 continued to have these fantasies or urges.

11 I will submit to the court even if he is not  
12 clinically diagnosed as a pedophile, the alternative  
13 explanation he has given is just as disturbing because he has  
14 had this sexual need and desire that is so intense, that he  
15 went out and victimized dozens of children without any  
16 consideration that they were real children with real feelings  
17 who were really being traumatized, and he was doing this for  
18 his own sexual satisfaction.

19 I find that just as disturbing as whether or not  
20 he's a pedophile, because he intentionally victimized  
21 children. So I find that he is a risk. I find that this is  
22 just incredibly disturbing behavior that absolutely needs to  
23 be punished.

24 While he may be remorseful, the amount of children  
25 that he has affected, and it may come up and it may -- we

1 don't know how much it's affecting their lives. It's one of  
2 those things that they're always going to know for their  
3 entire lives that they were exploited and victimized.  
4 Sometimes being remorseful isn't enough, and I think the  
5 amount of children, the amount of victims here justifies --  
6 the nature of his conduct justifies the 30-year sentence that  
7 the government is asking for.

8 THE COURT: Thank you.

9 MS. TURNER: Thank you.

10 MR. WIMER: Thank you, Judge.

11 Judge, I don't think any of us would disagree,  
12 including my client, that what happened in this case was, you  
13 know, completely unacceptable to anyone in society. I've had  
14 this case for a while, gone through the evidence, know it  
15 pretty well, and it's even troubling to go through when you're  
16 discussing that with the client, some of the things that  
17 transpired here.

18 I don't necessarily agree with the government's  
19 position that he hasn't accepted responsibility. Whatever his  
20 -- what he thinks might be the genesis for what started this  
21 behavior, I guess that's up for debate, but I think in his  
22 letter to the court, he did express remorse and is sincere  
23 about it. We've had enough discussions to realize what  
24 happened here was completely unacceptable.

25 He understands -- I don't think he understood at the

1 time, which in a lot of criminal events, a lot of people don't  
2 understand the potential ramifications of their behavior at  
3 the time they're doing it, and obviously he understands that  
4 now, has admitted to all the conduct, apologized for all the  
5 conduct, and understands that he's going to have to serve  
6 probably a lengthy sentence for the conduct.

7 I requested -- well, the statute itself, Judge, is  
8 inherently very firm with people, even first-time offenders.  
9 This is a guy with no criminal history, no real predisposition  
10 to this type of behavior. Apparently he was obviously  
11 working, got into drinking, and was -- just got completely,  
12 completely out of control after he started getting responses  
13 from these people. Not that that's any sort of a  
14 justification, it's not, but it just sort of spiraled into a  
15 complete disaster, not only for himself, but, I mean, all the  
16 people that he contacted. And we know there were a lot.

17 I think that's probably the crux of this case and I  
18 think the biggest concern. I understand the government's  
19 position is truly the amount of people that he ended up  
20 contacting that, you know, that they found evidence of, and he  
21 understands that now. Not so much at the time.

22 But I requested the court impose the 180-month  
23 minimum on both counts concurrent. He's going to be late  
24 forties if he is released on that. He's going to have time to  
25 engage in programs and corrective behavior while he's

1 incarcerated. That statute is designed to punish people  
2 harshly, even first-time offenders, people with no history.

3 He pled guilty to, you know, counts that carry a  
4 15-year mandatory minimum straight up. Anything over and  
5 above that was reserved for whatever the court thinks, you  
6 know, the offense merits.

7 I did go back in my memo, pulled about ten cases or  
8 so over the last couple of years where the average sentence  
9 was roughly around 19 years with varying degrees of conduct.  
10 Some were just contacting people such as he was doing. Some  
11 involved physical contact, sexual abuse. There's a varying  
12 nature of circumstances regarding child pornography cases or  
13 sexual abuse cases.

14 In his case I pointed out a few of the things that  
15 did not happen. Not to minimize his conduct but there was no  
16 enticement to meet people or physical contact or anything of  
17 that nature. He just went completely off the reservation in  
18 contacting these people and is here today because of it and is  
19 not going home any time soon because of it, and he's aware of  
20 that. I think he's accepted responsibility and is going to  
21 deal with whatever the court imposes on him.

22 I asked him if he wanted to make a statement, but he  
23 said that he was just going to stand basically on what he  
24 wrote in his letter to the court and didn't want to belabor  
25 the point, repeat everything. So I think I've said my piece,

1 and we're ready to move forward.

2 THE COURT: Mr. Cuddihe, would you join him up here  
3 at the podium.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir, I need to ask you as well, make  
6 sure you know you have the right to tell the court anything  
7 you want. I have read your letter, but I need to give you  
8 that option.

9 THE DEFENDANT: Yes, Your Honor. I understand that.

10 THE COURT: Very good. You choose not to make a  
11 statement, just rely upon your letter?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Sir, pursuant to 18 U.S.C., 3553, this  
14 court is required to impose a sentence that is sufficient but  
15 not greater than necessary to comply with the provisions of  
16 that statute. I've considered the advisory guidelines. I've  
17 considered the 3553 factors.

18 We've talked pretty extensively in this hearing  
19 about the nature and circumstances of your offense. By all  
20 accounts, they're an affront to all humanity. The young girls  
21 that you decided to prey upon are perfect and innocent and  
22 worthy of protection by every human on the face of the Earth.  
23 That's what we as humans, we as mammals do is protect the  
24 young.

25 I read your letter. I know you mentioned your

1 remorse for the victims. I think what's so surprising about  
2 this crime, I understand your argument that you were working  
3 hard in Florida, and by all the letters, you're a hard worker,  
4 but you would go to your hotel room and you'd get drunk and  
5 you'd do these things.

6 But all of these interactions, and I understand  
7 there's something about a screen that separates us from our  
8 humanity, but you're interacting and can actually see pictures  
9 of these perfect, innocent, little people. And so it's not  
10 like a blog. It's not just an email. There are little girls  
11 living out your sexual fantasy, and I tell you one thing I  
12 just don't believe. There's enough weirdness out in the world  
13 and there's something for everybody that there's not -- wasn't  
14 an adult woman who would satisfy those desires if those were  
15 truly your desires. In my mind you're targeting underage  
16 children for a reason, either because they're more easily  
17 manipulated, which you did really good at, or that was part of  
18 your fantasy.

19 So those are the nature and circumstances of the  
20 offense, and like almost everyone who comes before us on a  
21 child pornography case, you have a criminal history category  
22 1, which means nothing. You've done nothing criminal in your  
23 past. These letters are always helpful because they show a  
24 whole other side to a human, and we all have that line that  
25 goes through every human heart, either good or bad. There's

1 obviously some wonderful things about you.

2 I also wonder how you got so off path given the  
3 large amount of people who obviously love you and support you  
4 and would probably do anything for you if you had only asked.  
5 So now we're left with me having to come up with a sentence to  
6 reflect the seriousness of the offense and promote respect for  
7 the law, and that's where for me the guidelines are important  
8 in a case like this.

9 The guidelines are designed to tell us here's what a  
10 sentence normally should be within and a range of that,  
11 because, especially in child pornography cases, our natural  
12 human inclination is not mercy in any way. When I think of  
13 those young ladies who will eternally have that kind of in  
14 their history of who they are and what they experienced,  
15 there's nothing I can do to give justice. There's nothing I  
16 can do. Those young ladies for the rest of their life are  
17 going to be carrying that burden.

18 It's the judgment of this court that the defendant  
19 is sentenced to the Bureau of Prisons for 360 months on each  
20 count to run concurrent. I find that you do not have the  
21 means to pay a fine and waive any fine as required by law,  
22 order a special assessment in the amount of \$200, 30 years of  
23 supervised release to follow.

24 Is there any dispute on the \$3,000 request for  
25 restitution?

1 MR. WIMER: No. We stipulate to that, Judge.

2 THE COURT: \$3,000 in restitution. Waive the JVTA  
3 special assessment.

4 While on supervised release, you shall comply with  
5 all standard conditions of supervised release that have been  
6 adopted by this court as well as the special and mandatory  
7 conditions of supervision as set forth in part D of the  
8 presentence report.

9 To the extent that you've not waived your right to  
10 appeal this judgment and sentence pursuant to the plea  
11 agreement you've entered in this case, you have 14 days from  
12 the entry of judgment in your case to file a notice of appeal.  
13 If you do not file a notice of appeal within 14 days of the  
14 date of the judgment, you will forever lose your right to  
15 appeal. If you cannot afford to file a motion to appeal, you  
16 can file a motion to proceed in forma pauperis. If you so  
17 request, the clerk of the court shall immediately prepare and  
18 file a notice of appeal on your behalf.

19 Anything additional from the government?

20 MS. TURNER: Yes, Your Honor. The government would  
21 dismiss Counts 3 and 7 of the indictment -- 3 through 7.

22 THE COURT: That will be granted.

23 Anything additional from the defense?

24 MR. WIMER: No.

25 THE PROBATION OFFICER: Your Honor, if I may, the

1 probation office presented a recommendation he be placed at a  
2 BOP facility that has the Sexual Offender Treatment Program.

3 THE COURT: I'll make that recommendation.

4 THE PROBATION OFFICER: Thank you, Judge.

5 THE COURT: Thank you. We'll be in recess.

6 \* \* \* \* \*

7 REPORTER'S CERTIFICATE

8  
9 I certify that the foregoing pages are a correct  
10 transcript from the record of proceedings in the  
11 above-entitled matter.

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13 \_\_\_\_\_  
14 Date

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16 Registered Merit Reporter  
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